

EXHIBIT A

Declaration of William McKerall

Texas Facilities Commission

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

THE GENERAL LAND OFFICE OF
TEXAS, and DAWN BUCKINGHAM,
M.D., in her official capacity as
Commissioner of the Texas General
Land Office,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; and
ALEJANDRO MAYORKAS, in his
official capacity as Secretary of the
Department of Homeland Security,

Defendants.

No. 7:21-cv-00272

MISSOURI and TEXAS,

Plaintiffs,

v.

JOSEPH R. BIDEN, in his official capacity
as President of the United States, *et al.*,

Defendants.

No. 7:21-cv-00420
(formerly No. 6:21-cv-00052)

DECLARATION OF WILLIAM McKERALL

My name is William McKerral and I am over the age of 18 and fully competent to make this declaration and state the following:

1. I am the Deputy Executive Director and Director of Facilities Design & Construction for the Texas Facilities Commission (TFC). I have worked for TFC since October 2023. I have forty-five years of experience in engineering, construction, and infrastructure management. Before joining TFC, I served as Founding Partner and President of Structured Health Data Systems, an engineering technology firm in Waco, Texas. Prior to this role, I served thirty years in the U.S. Navy Civil Engineer Corps and 2 years with the Army Corps of Engineers in engineering and chief executive positions. My military career culminated as Department of Defense Director of Infrastructure & Environment for Europe and Africa. I hold a master's degree in civil engineering from Texas A&M, am a Registered Professional Engineer in Texas, and have been published in the American Society for Testing and Materials (ASTM) and American Concrete Institute (ACI) Structural Journals.

2. TFC is an agency of Texas supporting Texas and Texans through strategic facilities planning, asset management, design, construction, operation, maintenance, leasing of state facilities, and the sale, reallocation, or disposal of state and federal surplus property. TFC serves state agencies, legislative members/staff, and the public that utilize the state facilities owned, managed, or leased by TFC, as well as managing the renovations and construction for other state agencies. TFC provides property management, repair, renovation, maintenance, custodial, grounds, and utility services for its building inventory. TFC maintains a 24-hour, 7-day-a-week

operation to ensure continuity of operations of vital building systems. Also, TFC provides physical security for certain state-owned facilities utilizing automated physical security management systems, credentialing, and badging services, including properly vetting and conducting criminal background checks on TFC employees, contractors, applicants, and consultants for authorized access to State buildings. Finally, TFC manages commercial parking for special events and the University of Texas in Austin football games tailgating on TFC-controlled properties.

3. On June 16, 2021, Texas Governor Greg Abbott declared that TFC's role in procuring, building, and managing Texas-owned property and leased facilities includes projects that enhance the safety and security of Texas, including the construction of a Texas border wall. Governor Abbott ordered TFC to hire a program manager to oversee construction of a Texas border wall and lead the process of planning and scoping the project, and hiring the contractors and subcontractors needed to build the wall. Since that time TFC has been intimately involved in the construction of a border wall along the Texas border, whether that wall is sponsored and directed by Texas or the federal government.

4. TFC's involvement in border wall operations in Texas is part of a larger Texas effort known as Operation Lone Star. In 2021, Gov. Abbott launched Operation Lone Star, deploying the Texas National Guard and Texas Department of Public Safety to the southern border. Operation Lone Star personnel work around-the-clock to detect and repel illegal crossings, arrest human smugglers and cartel gang members, and stop the flow of deadly drugs like fentanyl into our nation.

5. As the Deputy Executive Director and Director of Facilities Design & Construction, I am directly involved or knowledgeable in all matters regarding the construction of a Texas border wall. I and my staff have also worked directly with the Texas General Land Office (GLO). GLO manages over 13 million acres of state-owned lands and mineral rights, with the revenue generated from those lands deposited into Texas's Permanent School Fund ("PSF") which is used to educate the schoolchildren of Texas. One of the Texas-owned pieces of property managed by GLO, known as the GLO Farm, is a 3099-acre farm in Starr County. Starr County is in the heart of the Rio Grande Valley ("RGV"). (RGV is also an identified sector by Customs and Border Protection ("CBP") regarding wall construction.) The GLO Farm is situated on the Texas-Mexico border and has been a centerpiece of this litigation.

6. I am aware of the Court's preliminary injunction of March 8, 2024 (MEMORANDUM OPINION AND ORDER, Dkt. 128) and the Court's permanent injunction of May 29, 2024 (FINAL JUDGMENT AND PERMANENT INJUNCTION, Dkt. 208). Since that time, the Department of Justice (DOJ) has provided quarterly reports on compliance and border contract activity, which TFC has reviewed.

7. During this month, TFC became aware of certain reports that the federal government was selling border wall parts and pieces in advance of the next administration assuming office. TFC closely tracks the things that are put up for availability by the federal government. Usually, we are able to determine from what is posted whether the materials are beneficial for our usage.

8. However, the items posted and made available in recent months have been difficult to evaluate. The materials at issue were left on site in situ, as is, without clear description such that Texas and other potential buyers could not adequately assess beneficial use and relocation costs. Moreover, the materials were distributed across multiple sites, some quite remote, making it difficult to assess comprehensive numbers and transportation costs. In other words, the details coming from the federal government regarding the location, availability, and nature of the materials available was lacking and inadequate for TFC (and others) to assess beneficial use.

9. Currently, TFC understands there are ~9000 useable panels stored near Tucson Arizona (on the grounds of the Pinal Airpark – GOV PLANET site). Only when these panels were collected and centrally located in the last couple of months was it possible for Texas (and others) to determine that these panels were indeed a valuable commodity in which Texas is interested.

10. Exhibits 4, 5, 6, and 7 to the federal government's response (Dkt. 237-4, 237-5, 237-6, and 237-7) tell a story regarding the availability of these materials, but the story is incomplete. For example, in Exhibit 4 (Dkt. 237-4), Mr. Hegge notes that Section 2890 of the NDAA "required DoD to submit a plan 'to use, transfer, or donate [all remaining construction materials] to States on the southern border,'" Dkt. 237-4 ¶ 6, but he offers no details about how that was done. He later summarily concludes that, "States on the southern border were then given preference under the Section 2890 provisions," *id.* at ¶ 10.b., but omits the complete attention to detail,

descriptions, photographs, video, etc.—the things Texas needs to make an appropriate beneficial use determination.

11. In Exhibit 5, Mr. Cannon accurately notes that Texas acquired from DLA approximately 2,500 eight-foot x 20- 32 foot bollard panels. Dkt. 237-5 ¶ 8. However, Mr. Cannon implies that Texas rejected and indicated that it did not want the “roughly 10,700 bollard panels remained unclaimed.” *Id.* That is untrue. Because of the lack of detail provided by the federal government and DLA, Texas was unable to adequately assess those materials.

12. In Exhibit 6, Mr. Enriquez states that CBP acquired 12,500 bollard panels, which TFC understands to be true. However, TFC does not know or understand why CBP did not acquire all available bollard panels or why 10,700 bollard panels remained unclaimed and thus available for auction.

13. After personally traveling to Arizona and viewing the relocated and stored panels on December 19, 2024, I can state without reservation that these are in good condition and Texas is interested in acquiring most of the ~9,000 panels I surveyed at the Pinal Air Park in Arizona.

14. TFC is disappointed with the sale or auction of border wall materials that were never fully presented to Texas for its proper consideration and acquisition, as was required by the FY24 NDAA. And the origin of the materials that have been sold or auctioned remains an open question as to whether they were purchased with the FY2020 or FY2021 barrier system appropriations or whether the sale or auction constituted a violation of this Court’s injunction.

15. Texas continues to be fervently committed to Operation Lone Star and securing its southern border. Texas will continue to build border wall using the Design Standards of the Federal Border Wall, to maximize the potential for ultimately transferring the Wall to Federal Customs and Border Patrol. These federally contracted panels fit precisely with the Texas wall such that sections built by Texas will successfully connect to and work as part of the larger national border wall. The sale and auction of border wall materials to others that can otherwise be used to secure our southern border harms Texans and Texas's ability to provide maximum safety and security to its citizens.

16. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 26th day of December, 2024.

DocuSigned by:

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WILLIAM McKERALL